

EXHIBIT 143

ROBINS KAPLAN LLP
Amy Churan (SBN 216932)
AChuran@RobinsKaplan.com
2049 Century Park East, Suite 3400
Los Angeles, CA 90067
Telephone: 310 552 0130
Facsimile: 310 229 5800

Melissa D'Alelio (admitted *pro hac vice*)
MDAlelio@RobinsKaplan.com
800 Boylston Street, Suite 2500
Boston, MA 02199
Telephone: 617 267 2300
Facsimile: 617 267 8288

Attorneys for Defendants Ironshore Specialty Insurance
Company; Certain Underwriters at Lloyd's, London and
London market companies Subscribing to Policy No.
(UMR) B0180PG1902606; Certain Underwriters at
Lloyd's, London and London market companies
Subscribing to Policy No. (UMR) B0180PG1902611;
Certain Underwriters at Lloyd's, London Subscribing to
Policy No. (UMR) B0180PG1902610; Certain
Underwriters at Lloyd's, London Subscribing to Policy
No. (UMR) B0180PG1903066; Certain Underwriters at
Lloyd's, London Subscribing to Policy No. (UMR)
B0180PG1902622; Ategrity Specialty Insurance
Company; and RSUI Indemnity Company

(Additional counsel listed on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JRK PROPERTY HOLDINGS, INC.,

Plaintiff,

v.

COLONY INSURANCE
COMPANY, et al.

Defendants.

Case No. 21STCV19983

DEFENDANTS' REPLY TO PLAINTIFF'S
RESPONSE TO SUPPLEMENTAL AUTHORITY
CITED AT ORAL ARGUMENT ON DEFENDANTS'
MOTION FOR JUDGMENT ON THE PLEADINGS

DATE: April 6, 2022
TIME: 8:30 a.m.
DEPT.: 32

Complaint Filed: May 27, 2021
Trial Date: August 9, 2022
Judge: Hon. Daniel S. Murphy
Department: 32

ADDITIONAL DEFENDANTS' COUNSEL

Counsel	Defendants
<p>DENTONS US LLP Julia M. Beckley (SBN 247493) 2000 McKinney Avenue, Suite 1900 Dallas, Texas 75201 Tel (214) 259-1854 Fax (214) 259-0910 julia.beckley@dentons.com</p> <p>G. Richard Dodge , Jr. (admitted <i>pro hac vice</i>) 1900 K Street NW Washington, DC 20006 Tel (202)496-7500 Fax (202) 496-7756 rich.dodge@dentons.com</p> <p>Keith Moskowitz (admitted <i>pro hac vice</i>) 233 South Wacker Drive, Suite 5900 Chicago, IL 60606-6361 Tel (312) 876-8220 Fax (312) 876 7934 keith.moskowitz@dentons.com</p>	<p>Attorneys for Defendant American International Group UK Limited as Subscriber to Policy No. (UMR) BO180PG1902606</p>
<p>CUMMINS & WHITE, LLP Larry M. Arnold (SBN 060459) Margaret R. Miglietta (SBN 116026) Noura K. Rizzuto (SBN 291455) 2424 S.E. Bristol Street, Suite 300 Newport Beach, CA 92660-0757 Tel (949) 852-1800 Fax (949) 852-8510 larnold@cwlawyers.com mmiglietta@cwlawyers.com nrizzuto@cwlawyers.com</p> <p>STEWART SMITH William F. Stewart (admitted <i>pro hac vice</i>) 300 Four Falls Corporate Center 300 Conshohocken Road, Suite 670 West Conshohocken, PA 19428 Tel (484) 344-5296 Fax (484) 534-9470 WStewart@stewartsmithlaw.com</p>	<p>Attorneys for Defendant Colony Insurance Company</p>

Counsel	Defendants
<p>KENNEDYS CMK LLP Susan Frances Dent (SBN 292900) 101 California Street, Suite 1225 San Francisco, CA 94111 Tel (415) 323-4460 Fax (415) 323-4445 Susan.Dent@kennedyslaw.com</p> <p>Gary S. Kull (<i>pro hac vice</i> application pending) 120 Mountain View Boulevard Basking Ridge, NJ 07920 Tel (908) 848-6300 Fax (908) 647-8390 Gary.Kull@kennedyslaw.com</p>	<p>Attorneys for Defendant Crum & Forster Specialty Insurance Company</p>
<p>CLYDE & CO US LLP Susan Koehler Sullivan (SBN 156418) Brett Charles Safford (SBN 292048) 355 S. Grand Avenue, Suite 1400 Los Angeles, CA 90071 Telephone: (213) 358-7600 Facsimile: (213) 358-7650 susan.sullivan@clydeco.us brett.safford@clydeco.us</p>	<p>Attorneys for Defendants Endurance American Specialty Insurance Company; and Maxum Indemnity Company</p>
<p>DICKINSON WRIGHT RLLP Bennett Evan Cooper (SBN 128544) 800 W. California Avenue, Suite 110 Sunnyvale, California 94086 Tel: (602) 285-5044 Fax: (844) 670-6009 bcooper@dickinsonwright.com</p>	<p>Attorneys for Defendant Evanston Insurance Company</p>
<p>MUSICK, PEELER & GARRETT LLP David A. Tartaglio (SBN 117232) 624 South Grand Avenue, Suite 2000 Los Angeles, CA 90017-3383 Tel (213) 629-7600 Fax (213) 624-1376 d.tartaglio@musickpeeler.com</p> <p>WILEY REIN LLP Benjamin C. Eggert (admitted <i>pro hac vice</i>) Joseph W. Gross (admitted <i>pro hac vice</i>) 2050 M Street NW Washington, DC 20036 Tel (202) 719-7000 Fax (202) 719-7049 BEggert@wiley.law JGross@wiley.law</p>	<p>Attorneys for Defendant General Star Indemnity Company</p>

Counsel	Defendants
<p>AKERMAN, LLP Michael R. Weiss (SBN 180946) 601 West Fifth Street, Suite 300 Los Angeles, CA 90071 Tel (213) 688-9500 Fax (213) 627-6342 Michael.Weiss@akerman.com</p> <p>Bryan G. Scott (<i>pro hac vice</i> forthcoming) 100 North Main Street, Suite 2425 Winston-Salem, NC 27101 Tel (336) 296-7104 Fax (336) 296-7010 Bryan.Scott@akerman.com</p> <p>LEWIS BRISBOIS BISGAARD & SMITH LLP Seth I. Weinstein (<i>pro hac vice</i> forthcoming) 77 Water Street, 21st Floor New York, NY 10005 Tel (212) 232-1300 Fax (212) 232-1399 Seth.Weinstein@lewisbrisbois.com</p>	<p>Attorneys for Defendants Homeland Insurance Company; and Hallmark Specialty Insurance Company</p>
<p>FAEGRE DRINKER BIDDLE & REATH LLP Kristopher S. Davis (SBN 193452) 1800 Century Park East Suite 1500 Los Angeles, CA 90067-1517 Tel (310) 203-4000 Fax (310) 229-1285 kristopher.davis@faegredrinker.com</p> <p>RIKER DANZIG SCHERER HYLAND & PERRETTI LLP Brian E. O'Donnell (<i>admitted pro hac vice</i>) Maura C. Smith (<i>admitted pro hac vice</i>) Headquarters Plaza One Speedwell Avenue Morristown, NJ 07962-1981 Tel (973) 538-0800 Fax (973) 538-1984 bodonnell@riker.com msmith@RIKER.com</p>	<p>Attorneys for Defendant Mitsui Sumitomo Insurance Company of America</p>

Counsel	Defendants
<p>PHELPS DUNBAR LLP Jay R. Sever (SBN 165859) 365 Canal Street, Suite 2000 New Orleans, LA 70130-6534 Tel (504) 566-1311 Fax (504) 568-9130 jay.sever@phelps.com</p> <p>SELMAN BREITMAN LLP Meka Moore (SBN 180017) Damian L. Palombi (SBN 311252) 11766 Wilshire Boulevard, 6th Floor Los Angeles, CA 90025-6538 Tel (310) 445-0800 Fax (310) 473-2525 mmoore@selmanlaw.com dpalombi@selmanlaw.com</p>	<p>Attorneys for Defendant Scottsdale Insurance Company</p>

Defendants submit this Reply in response to JRK's "Response to Supplemental Authority." JRK argues that *Spirit Realty Capital, Inc. v. Westport Ins. Co.*, 2021 WL 4926016 (S.D.N.Y. Oct. 21, 2021) is not applicable here because it requires the presence of disease at an insured location, but that the JRK Policies do not. To the contrary, JRK conceded the reverse in its Complaint when it asserted that "JRK's Policy expressly includes coverage for losses incurred based on the presence of Communicable Disease at JRK's properties." Compl. ¶ 9 (emph. added). Further, requiring actual presence at the insured location is the only reasonable interpretation of the communicable disease ("CD") provision here, which requires that "access to a Location owned, leased or rented by the Insured is limited, restricted, or prohibited as a result of an order of an authorized governmental agency regulating the actual not suspected presence of communicable disease; or a decision of an Officer of the Insured as a result of the actual not suspected presence of communicable disease." GENERALSTAR00000062. To suggest that the JRK policy covers loss associated with a government order or JRK action taken in response to the "actual not suspected" presence of a communicable disease found anywhere, as opposed to specifically on the insured's property, strains credulity and renders the "actual not suspected" requirement meaningless.

And ultimately, whether JRK has sufficiently alleged the actual presence of the virus at its insured properties is irrelevant. JRK cannot show entitlement to CD coverage for two reasons. First, JRK does not and cannot allege that its financial losses were caused by any "order of an authorized governmental agency regulating the actual not suspected presence of Communicable Disease" or by any "decision of an Officer of the Insured as a result of the actual not suspected presence of Communicable Disease" at its insured properties. *Id.* Instead, JRK admits its financial losses were caused by the blanket government orders issued in response to the pandemic at large and by the ensuing economic downturn :

- "The Orders . . . have devastated JRK's business. Overnight, hotel properties that were once busy, bustling destinations for travelers became ghost towns, decimating JRK's revenue." Compl. ¶ 6.
- "Shortly after the pandemic reached the United States and shutdown orders began to be issued, JRK began suffering [financial] losses . . ." Compl. ¶ 11.
- "The Orders directly impacted JRK's hotels and residential tenants, ultimately leading to the devastating financial losses at issue in this lawsuit." Compl. ¶ 63.

- The Orders “had wide-reaching impacts, including reduced travel and loss of jobs, resulting in tenants failing to pay market rents.” Compl. ¶ 66.
- “[D]ue to the pandemic and shutdown Orders, many of the residential tenants to whom JRK had leased apartments have been unable to continue paying rent, have sought and obtained decreased rental rates, or have terminated their leases.” Compl. ¶ 76.
- “Other governmental restrictions . . . have prohibited residential evictions, allowed tenants to defer rent payments, prohibited the charging of late fees or interest on unpaid rent, and prohibited otherwise normal rent increases during the pandemic.” Compl. ¶ 77.

No government orders were issued based on “actual not suspected” presence of the virus on JRK’s properties. To the extent JRK claims it had to “expend substantial sums of money to disinfect contaminated spaces,” Compl. ¶ 75, those sums were not due to *access* to its locations being “limited, restricted, or prohibited.” Moreover, to the extent JRK asserts it had to temporarily close or restrict tenant amenities (e.g. swimming pools) and temporarily conduct leasing operations virtually, those allegations are not tethered to any allegations of *actual loss* to JRK, as required to implicate coverage. Instead, JRK’s Complaint makes clear that its losses were caused by the general governmental orders—which do not give rise to coverage under the CD provision. *See Inns by Sea v. Cal. Mut. Ins. Co.*, 71 Cal. App. 5th 688, n.11 (2021) (noting that specific allegations of causation control over any potentially inconsistent general allegations).

Second, JRK has twice admitted: “[t]he limited or prohibited access to JRK properties was a result of the global pandemic and government responses to it, *not due to an order by a governmental agency or JRK officer arising from the actual not suspected presence of the virus.*” Churan Decl., Jan. 21, 2022, Ex. 1 (E.D. Va. Amend. Compl. ¶ 81); Churan Decl., Mar. 23, 2022, (E.D. Va. Original Compl. ¶ 81). JRK’s admission is fatal to its claim for CD coverage. JRK’s subsequent attempt to allege inconsistent facts in its latest complaint fails as a matter of law. *Cantu v. Resolution Trust Corp.*, 4 Cal. App. 4th 857, 877 (1992) (“A plaintiff may not avoid a demurrer by pleading facts or positions in an amended complaint that contradict the facts pleaded in the original complaint.”). JRK’s allegations “constitute judicial admissions.” *Castillo v. Barrera*, 146 Cal. App. 4th 1317, 1324 (2007). “As such they are conclusive concessions of the truth of a matter and have the effect of removing it from the issues.” *Id.*

DATED: April 11, 2022

ROBINS KAPLAN LLP

By: /s/ Amy Churan

Amy M. Churan

Melissa M. D'Alelio

Attorneys For Defendants Ironshore Specialty Insurance Company; Certain Underwriters at Lloyd's, London and London market companies Subscribing to Policy No. (UMR) B0180PG1902606; Certain Underwriters at Lloyd's, London and London market companies Subscribing to Policy No. (UMR) B0180PG1902611; Certain Underwriters at Lloyd's, London Subscribing to Policy No. (UMR) B0180PG1902610; Certain Underwriters at Lloyd's, London Subscribing to Policy No. (UMR) B0180PG1903066; Certain Underwriters at Lloyd's, London Subscribing to Policy No. (UMR) B0180PG1902622; Ategrity Specialty Insurance Company; and RSUI Indemnity Company
DENTONS US LLP

/s/ Julia M. Beckley

Attorneys for Defendant

American International Group UK Limited
as Subscriber to Policy No. (UMR)

BO180PG1902606

Julia M. Beckley (SBN 247493)

2000 McKinney Avenue, Suite 1900

Dallas, Texas 75201

Tel (214) 259-1854

Fax (214) 259-0910

julia.beckley@dentons.com

G. Richard Dodge , Jr. (admitted *pro hac vice*)

1900 K Street NW

Washington, DC 20006

Tel (202)496-7500

Fax (202) 496-7756

rich.dodge@dentons.com

Keith Moskowitz (admitted *pro hac vice*)

233 South Wacker Drive, Suite 5900

Chicago, IL 60606-6361

Tel (312) 876-8220

Fax (312) 876 7934

keith.moskowitz@dentons.com

CUMMINS & WHITE, LLP

/s/ Larry M. Arnold

Attorneys for Defendant

Colony Insurance Company

Larry M. Arnold (SBN 060459)

Margaret R. Miglietta (SBN 116026)

Noura K. Rizzuto (SBN 291455)

2424 S.E. Bristol Street, Suite 300

Newport Beach, CA 92660-0757

Tel (949) 852-1800

Fax (949) 852-8510

larnold@cwlawyers.com

mmiglietta@cwlawyers.com

nrizzuto@cwlawyers.com

STEWART SMITH

William F. Stewart (admitted *pro hac vice*)

300 Four Falls Corporate Center

300 Conshohocken Road, Suite 670

West Conshohocken, PA 19428

Tel (484) 344-5296

Fax (484) 534-9470

WStewart@stewartsmithlaw.com

KENNEDYS CMK LLP

/s/ Susan Frances Dent

Attorneys for Defendant

Crum & Forster Specialty Insurance Company

Susan Frances Dent (SBN 292900)

101 California Street, Suite 1225

San Francisco, CA 94111

Tel (415) 323-4460

Fax (415) 323-4445

Susan.Dent@kennedyslaw.com

Gary S. Kull (*pro hac vice* application pending)

120 Mountain View Boulevard

Basking Ridge, NJ 07920

Tel (908) 848-6300

Fax (908) 647-8390

Gary.Kull@kennedyslaw.com

CLYDE & CO US LLP

/s/ Susan Koehler Sullivan
Attorneys for Defendants
Endurance American Specialty Insurance Company;
and Maxum Indemnity Company
Susan Koehler Sullivan (SBN 156418)
Brett Charles Safford (SBN 292048)
355 S. Grand Avenue, Suite 1400
Los Angeles, CA 90071
Telephone: (213) 358-7600
Facsimile: (213) 358-7650
susan.sullivan@clydeco.us
brett.safford@clydeco.us

DICKINSON WRIGHT RLLP

/s/ Bennet Evan Cooper
Attorneys for Defendant
Evanston Insurance Company
Bennett Evan Cooper (SBN 128544)
800 W. California Avenue, Suite 110
Sunnyvale, California 94086
Tel: (602) 285-5044
Fax: (844) 670-6009
bcooper@dickinsonwright.com

MUSICK, PEELER & GARRETT LLP

/s/ David A. Tartaglio
Attorneys for Defendant
General Star Indemnity Company
David A. Tartaglio (SBN 117232)
624 South Grand Avenue, Suite 2000
Los Angeles, CA 90017-3383
Tel (213) 629-7600
Fax (213) 624-1376
d.tartaglio@musickpeeler.com

WILEY REIN LLP

Benjamin C. Eggert (admitted *pro hac vice*)
Joseph W. Gross (admitted *pro hac vice*)
2050 M Street NW
Washington, DC 20036
Tel (202) 719-7000
Fax (202) 719-7049
BEggert@wiley.law
JGross@wiley.law

AKERMAN, LLP

/s/ Michael R. Weiss

Attorneys for Defendants
Homeland Insurance Company; and Hallmark
Specialty Insurance Company
Michael R. Weiss (SBN 180946)
601 West Fifth Street, Suite 300
Los Angeles, CA 90071
Tel (213) 688-9500
Fax (213) 627-6342
Michael.Weiss@akerman.com

Bryan G. Scott (*pro hac vice* forthcoming)
100 North Main Street, Suite 2425
Winston-Salem, NC 27101
Tel (336) 296-7104
Fax (336) 296-7010
Bryan.Scott@akerman.com

LEWIS BRISBOIS BISGAARD
& SMITH LLP
Seth I. Weinstein (*pro hac vice* forthcoming)
77 Water Street, 21st Floor
New York, NY 10005
Tel (212) 232-1300
Fax (212) 232-1399
Seth.Weinstein@lewisbrisbois.com

FAEGRE DRINKER BIDDLE & REATH LLP

/s/ Kristopher S. Davis

Attorneys for Defendant
Mitsui Sumitomo Insurance Company of America
Kristopher S. Davis (SBN 193452)
1800 Century Park East Suite 1500
Los Angeles, CA 90067-1517
Tel (310) 203-4000
Fax (310) 229-1285
kristopher.davis@faegredrinker.com

RIKER DANZIG SCHERER HYLAND
& PERRETTI LLP
Brian E. O'Donnell (*admitted pro hac vice*)
Maura C. Smith (*admitted pro hac vice*)
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962-1981
Tel (973) 538-0800
Fax (973) 538-1984
bodonnell@riker.com
msmith@RIKER.com

1
2
3
4
5
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10
11
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14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PHELPS DUNBAR LLP

/s/ Jay R. Sever

Attorneys for Defendant

Scottsdale Insurance Company

Jay R. Sever (SBN 165859)

365 Canal Street, Suite 2000

New Orleans, LA 70130-6534

Tel (504) 566-1311

Fax (504) 568-9130

jay.sever@phelps.com

SELMAN BREITMAN LLP

Meka Moore (SBN 180017)

Damian L. Palombi (SBN 311252)

11766 Wilshire Boulevard, 6th Floor

Los Angeles, CA 90025-6538

Tel (310) 445-0800

Fax (310) 473-2525

mmoore@selmanlaw.com

dpalombi@selmanlaw.com

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
 COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2049 Century Park East, Suite 3400, Los Angeles, California 90067-3208.

On April 11, 2022, I served the foregoing document **DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO SUPPLEMENTAL AUTHORITY CITED AT ORAL ARGUMENT ON DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS** on the interested parties in this action as follows:


SEE ATTACHED SERVICE LIST

[] BY E-MAIL: I caused a copy of the document(s) to be sent from e-mail address jharrold@robinskaplan.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 11, 2022 at Los Angeles, California.



 Jwana Harrold

F

SERVICE LIST
JRK PROPERTY HOLDINGS, INC. v. COLONY INSURANCE, et al.
 LASC Case No. 21STCV19983

<p>SPERTUS, LANDES & UMHOFFER, LLP Kevin J. Minnick 617 West 7th Street, Suite 200 Los Angeles, CA 90017 Tel.: 213.205.6520 kminnick@spertuslaw.com Jon Powell jon@spertuslaw.com</p> <p>COHEN ZIFFER FRENCHMAN & MCKENNA Meredith Elkins (admitted pro hac vice) Nicholas Maxwell (admitted pro hac vice) 1350 Avenue of the Americas New York, NY 10019 212.584.1890 212.584.1891 facsimile melkins@cohenziffer.com nmaxwell@cohenziffer.com tepstein@cohenziffer.com cpellegrini@cohenziffer.com</p> <p>MITCHELL SANDLER, LLC Andrew L. Sandler (<i>pro hac vice</i> forthcoming) 1120 20th St, NW, Suite 725 Washington, DC 20036 asandler@mitchellsandler.com</p> <p>Chris McCall cmccall@mitchellsandler.com Arielle Stephenson Astephenson@mitchellsandler.com</p>	<p>Attorney for Plaintiff JRK PROPERTY HOLDINGS, INC.</p>
<p>DENTONS US LLP Julia M. Beckley 2000 McKinney Avenue, Suite 1900 Dallas, Texas 75201 Tel (214) 259-1854 Fax (214) 259-0910 julia.beckley@dentons.com</p> <p>G. Richard Dodge , Jr.</p>	<p>Attorneys for Defendant AMERICAN INTERNATIONAL GROUP UK LIMITED AS SUBSCRIBER TO POLICY NO. (UMR) B0180PG1902606</p>

1 2 3 4 5 6 7	1900 K Street NW Washington, DC 20006 Tel (202)496-7500 Fax (202) 496-7756 rich.dodge@dentons.com Keith Moskowitz 233 South Wacker Drive, Suite 5900 Chicago, IL 60606-6361 Tel (312) 876-8220 Fax (312) 876 7934 keith.moskowitz@dentons.com	
8 9 10 11 12 13	CUMMINS & WHITE, LLP Larry M. Arnold Margaret R. Miglietta Noura K. Rizzuto 2424 S.E. Bristol Street, Suite 300 Newport Beach, CA 92660-0757 Tel (949) 852-1800 Fax (949) 852-8510 larnold@cwlawyers.com mmiglietta@cwlawyers.com nrizzuto@cwlawyers.com	Attorneys for Defendant COLONY INSURANCE COMPANY
14 15 16 17 18	STEWART SMITH William F. Stewart (admitted <i>pro hac vice</i>) Gary Berdeen 300 Four Falls Corporate Center 300 Conshohocken Road, Suite 670 West Conshohocken, PA 19428 Tel (484) 344-5296 Fax (484) 534-9470 WStewart@stewartsmithlaw.com GBerdeem@stewartsmithlaw.com	Attorneys for Defendant COLONY INSURANCE COMPANY
19 20 21 22 23 24 25 26	KENNEDYS CMK LLP Susan Frances Dent 101 California Street, Suite 1225 San Francisco, CA 94111 Tel (415) 323-4460 Fax (415) 323-4445 Susan.Dent@kennedyslaw.com Gary S. Kull (<i>pro hac vice</i> application pending) 120 Mountain View Boulevard Basking Ridge, NJ 07920 Tel (908) 848-6300 Fax (908) 647-8390 Gary.Kull@kennedyslaw.com	Attorneys for Defendant CRUM & FORSTER SPECIALTY INSURANCE COMPANY
27 28	CLYDE & CO US LLP Susan Koehler Sullivan Brett Charles Safford 355 S. Grand Avenue, Suite 1400	Attorneys for Defendants ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY AND MAXUM INDEMNITY COMPANY

1 2 3 4 5 6 7 8	Los Angeles, CA 90071 Telephone: (213) 358-7600 Facsimile: (213) 358-7650 susan.sullivan@clydeco.us brett.safford@clydeco.us Robert W. Fisher (<i>pro hac vice</i> forthcoming) 271 17th Street NW, Suite 1720 Atlanta, GA 30363 Tel (404) 410-3150 Fax (404) 410-3151 Robert.Fisher@clydeco.us	
9 10 11 12 13 14 15 16 17 18 19 20 21 22	DICKINSON WRIGHT RLLP Bennett Evan Cooper Vail C. Cload 800 W. California Avenue, Suite 110 Sunnyvale, California 94086 Tel: (602) 285-5044 Fax: (844) 670-6009 bcooper@dickinsonwright.com Vail C. Cload 1850 North Central Avenue Suite 1400 Phoenix, AZ 85004 VCload@dickinson-wright.com Peter E. Doyle 2600 W. Big Beaver Rd. Suite 300 Troy, MI 48084-3312 PDoyle@dickinson-wright.com Timothy M. Strong 1850 North Central Avenue Suite 1400 Phoenix, AZ 85004 TStrong@dickinson-wright.com	Attorneys for Defendant EVANSTON INSURANCE COMPANY
23 24 25 26	MUSICK, PEELER & GARRETT LLP David A. Tartaglio 624 South Grand Avenue, Suite 2000 Los Angeles, CA 90017-3383 Tel (213) 629-7600 Fax (213) 624-1376 d.tartaglio@musickpeeler.com	Attorneys for Defendant GENERAL STAR INDEMNITY COMPANY
27 28	WILEY REIN LLP Benjamin C. Eggert (<i>pro hac vice</i> forthcoming) 2050 M Street NW	Attorneys for Defendant GENERAL STAR INDEMNITY COMPANY

1	Washington, DC 20036 Tel (202) 719-7000 Fax (202) 719-7049 BEggert@wiley.law	
2		
3	AKERMAN, LLP Michael R. Weiss 601 West Fifth Street, Suite 300 Los Angeles, CA 90071 Tel (213) 688-9500 Fax (213) 627-6342 Michael.Weiss@akerman.com	Attorneys for Defendants HOMELAND INSURANCE COMPANY AND HALLMARK SPECIALTY INSURANCE COMPANY
4	Bryan G. Scott (<i>pro hac vice</i> forthcoming) 100 North Main Street, Suite 2425 Winston-Salem, NC 27101 Tel (336) 296-7104 Fax (336) 296-7010 Bryan.Scott@akerman.com	
5		
6	LEWIS BRISBOIS BISGAARD & SMITH LLP Seth I. Weinstein (<i>pro hac vice</i> forthcoming) 77 Water Street, 21st Floor New York, NY 10005 Tel (212) 232-1300 Fax (212) 232-1399 Seth.Weinstein@lewisbrisbois.com	Attorneys for Defendants HOMELAND INSURANCE COMPANY AND HALLMARK SPECIALTY INSURANCE COMPANY
7		
8	FAEGRE DRINKER BIDDLE & REATH LLP Kristopher S. Davis 1800 Century Park East Suite 1500 Los Angeles, CA 90067-1517 Tel (310) 203-4000 Fax (310) 229-1285 kristopher.davis@faegredrinker.com	Attorneys for Defendant MITSUI SUMITOMO INSURANCE COMPANY OF AMERICA
9		
10	RIKER DANZIG SCHERER HYLAND & PERRETTI LLP Brian E. O'Donnell Maura C. Smith Casey Boyle Headquarters Plaza One Speedwell Avenue Morristown, NJ 07962-1981 Tel (973) 538-0800 Fax (973) 538-1984 bodonnell@riker.com msmith@riker.com caboyale@riker.com	Attorneys for Defendant MITSUI SUMITOMO INSURANCE COMPANY OF AMERICA
11		
12	PHELPS DUNBAR LLP Jay R. Sever	Attorneys for Defendant
13		

<p>365 Canal Street, Suite 2000 New Orleans, LA 70130-6534 Tel (504) 566-1311 Fax (504) 568-9130 jay.sever@phelps.com katie.myers@phelps.com</p>	<p>SCOTTSDALE INSURANCE COMPANY</p>
<p>SELMAN BREITMAN LLP Meka Moore Damian L. Palombi 11766 Wilshire Boulevard, 6th Floor Los Angeles, CA 90025-6538 Tel (310) 445-0800 Fax (310) 473-2525 mmoore@selmanlaw.com dpalombi@selmanlaw.com</p>	<p>Attorneys for Defendant SCOTTSDALE INSURANCE COMPANY</p>